IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9202 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KAMLESH JETHALAL BADIYANI

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner No. 1

MR PATEL, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 16/01/2002

ORAL JUDGEMENT

An order came to be passed by the Commissioner of Police, Ahmedabad City, Ahmedabad on 06.08.2001 detaining the petitioner, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short).

2. The detaining authority took into consideration four offences registered against the petitioner - detenu for theft of vehicles. The authority also took into consideration statements of two anonymous witnesses for considering his activities and came to conclusion that the activities of the petitioner - detenu are detrimental to public order. The authority also observed that less drastic remedy under ordinary law may not yield results as the detenu is required to be immediately prevented from pursuing his activities and, therefore, detention under PASA Act is the only remedy which can be resorted to. The authority, therefore, passed an order of detention in question.

3. The petitioner seeks to challenge the said order dated 06.08.2001 in this petition under Article 226 of the Constitution of India on various grounds stated in the petition.

4. Ms.Kachhava, learned advocate appearing for the petitioner - detenu has restricted her arguments to the ground that there is improper exercise of powers under Section 3(1) of the PASA Act. She submitted that the urgent need for detention recorded by the detaining authority is without any basis as the detenu was in judicial custody when the order was passed and, therefore, the order would stand vitiated. The petition may be accepted and the order may be quashed and set aside.

5. Mr. Patel, learned A.G.P. has opposed this petition.

6. Having regard to the contentions raised before this Court, it is amply clear from the ground of detention that the petitioner - detenu was in judicial custody in respect of all four offences registered against him. The authority observed that the detenu may apply for bail and on getting bail may get himself released by furnishing bail and continue his illegal activities and, therefore, he is required to be immediately prevented from pursuing his illegal activities. It also transpires that when the order was passed, no bail application was given. The observation recorded by the authority that the detenu may apply for bail and on getting bail may pursue his illegal activities is, therefore, without any basis. In the case of AMRITLAL VS. UNION GOVERNMENT THROUGH SECRETARY, MINISTRY OF FINANCE AND OTHERS, reported in AIR 2000 SC 3675, it is observed that the satisfaction of the

authority based on likelihood of detenu moving an application for bail is not sufficient, that likelihood of detenu moving an application for bail is different from likelihood to be released on bail. In the instant case, admittedly, the applicant had not applied for bail. He was in judicial custody in respect of four cases registered against him and, therefore, the order passed under Section 3(1) of the PASA Act, based on satisfaction that the detenu is immediately required to be detained is without any basis. The order of detention cannot be permitted to stand and, therefore, the petition deserves to be accepted.

6. In the result, the petition is allowed. The order impugned herein passed by the Commissioner of Police, Ahmedabad City, Ahmedabad on 06.08.2001 passed against the petitioner - detenu is hereby quashed and set aside. The detenu - Kamlesh Jethalal Badiyani be released from detention forthwith, if not required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

Sd/-

(A.L. Dave, J)

'Bhavesh'